IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 511 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-
and
Hon'ble MR.JUSTICE D.P.BUCH sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKOR KESAJI JARASANAGJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 511 of 1992

MRS KRISHNA V BAROT for Petitioners No. 1-2 (absent)

Mr.K.P.Raval, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. This Appeal has been filed by the appellants accused, who are real brothers, convicted for the offence punishable u/s. 302 read with Section 114 I.P.Code and sentenced to suffer R.I. for life by the Judgment and

order dated 18.6.1992 passed by the learned Additional Sessions Judge, Mehsana, in Sessions Case No.140 of 1987. This Appeal was straightway admitted on 23.6.1992 and the Bail was refused qua the appellant accused No.2 Thakore Chamanaji Jarasangji. However, notice for Bail regarding appellant - accused No.1 was made returnable on 1.7.1992 by the Division Bench of this Court. Later on i.e. on 6.7.1992 the appellant - accused No.1 Thakor Kesaji Jarasangji was ordered to be released on Bail in the sum of Rs.5000/- with surety of like amount. Thus, since then the appellant - accused No.1 is on Bail, whereas appellant accused No.2 is in Jail.

2. This Appeal is listed on the running final hearing Board of 26.11.2001. It is placed at Sr.No.8. Out of 7 Appeals, 2 have been adjourned, wherein Shri Deepak M. Shah was appearing, on his personal ground as he was required to go out of station because of death of his brother-in-law. It is unfortunate that though the Hon'ble Chief Justice has provided second Auxiliary Bench for hearing of old Criminal Appeals, in which most of the accused are in jail, most of the Advocates engaged or appointed, are not turning up and in their absence the matters are to be decided on merits after hearing the learned Addl. Public Prosecutor.

3. Today, we had to call learned Public Prosecutor Shri A.D.Oza as since last 3 days both A.P.P. Shri M.A.Bukhari and Shri K.P.Raval attached to this Court were not remaining present at sharp 11.00 a.m. However, both the learned APP assured this Court that henceforth they will remain punctual. Learned PP Shir Oza has also assured that all his APP's will remain punctual before the Courts. About the present situation prevailing in this Court learned PP Mr.Oza, suggested that after waiting for some time, if the Advocate do not turn up, then the matters may be decided on merits in their absence with the assistance of the APP present in the Court.

4. Since last 2 days we are requesting the learned APP's to inform their learned friends appearing for the accused to remain present, but unfortunately most of the advocates are not turning up. Yesterday, we told Shri K.P.Raval, learned A.P.P. to inform Shri Barot, who is appearing as Counsel for Ms.Krishna V. Barot for the appellant accused, to remain present. But, no one turned up for a pretty long time, therefore, we had to decide this appeal with the assistance of learned APP Shri Raval. Shri Raval stated at the bar that yesterday Shri Dave, Junior Advocate of Shri Barot was present. He was

looking at his paper book. Therefore, he was requested to inform his senior, but unfortunately no one turned up today when the matter was called out. Under the circumstances in absence of the learned Counsel for the appellant the matter is decided on merits.

5. It is the prosecution case that on 2.7.1987 at about 7.00 a.m. at village Nanidau of Tal.Mehsana, complainant Madarji Ravaji was doing agricultural work in his own field. At that time both the appellants accused came there armed with weapon. The accused No.1 had pickaxe (Kodali) with him. He asked the complainant that why he was digging "Sheda" and started giving filthy abuses. At that time deceased Jagaji came there and tried to pacify them. Thereupon, both the accused got excited. Accused No.1 asked accused No.2 to finish him (Jagla). Accused No.1 caught-hold of Jagaji and accused No.2 took out knife and gave blow on the chest of Jagaji and because of that Jagaji succumbed to the injury. Thus, the accused committed offences u/s. 302, 447, 504, 114 I.P.Code. They were also charged for the offences punishable u/s.37(1) and 135 of the Bombay Police Act for having deadly weapons with them.

6. The prosecution has examined 2 eye witnesses in support of its case i.e. (i) Madarji Ravaji, P.W.2, Ex.18, who is cousin of the deceased, and (ii) his brother Adarji, P.W.3, Ex.19.

7. It may be stated that counter complaint lodged by the present appellant - accused Keshaji is brought on record at Ex.24, at the instance of the defence. It shows that appellant - accused No.1 had also received Dharia injury on his left elbow. As per that complaint Madarji was having stick with him and he gave stick blow on his back. However, it may be stated that both the prosecution witnesses Madarji and Adarji, P.W. 2 and P.W.3 respectively have explained the injuries received by the accused Keshaji in their evidence. Thus, the presence of the accused at the scene of offence is duly proved by the prosecution.

8. In absence of the learned Counsel for the defence we have carefully gone through the evidence of both the witnesses Madarji and Adarji, but we could not find any material contradiction in their cross examination. In fact in Para : 7 the suggestion was made that when the incident was going on Jagaji in their self defence took out knife and gave blow, to the deceased which proved to be fatal one. If the appellant - accused No.1 Keshaji had not caught-hold of deceased Jagaji then the accused

No.2 would not have been in a position to inflict fatal injury with knife on the vital part of the body i.e. chest of deceased Jagaji. Discovery of the weapon at the instance of accused No.2 is fully proved by Panch witness Babuji, Ex.20, discovery Panchnama is at Ex.21.

9. It is true that except these two closely related witnesses no other independent witness is examined. But we can not overlook the fact that in the instant case one of them is an injured witness. In absence of material contradiction in their evidence it would be difficult for us to discard their testimony only on the ground that they were closely related to the deceased.

10. We have carefully gone through the impugned Judgment and order of conviction and sentence passed by the learned trial Judge convicting the appellants-accused for the offences punishable u/s.302, 114 I.P.C. and we are in complete agreement with the reasons assigned by the learned Judge for convicting both the accused.

11. In view of the above discussion we do not find any substance or merit in this Appeal and accordingly it fails and is hereby dismissed. Bail Bond of Appellant Accused No.1 - Thakor Kesaji Jarasangji stands cancelled. He shall now surrender before the Jail Authority forthwith, failing which Non Bailable Warrant shall be issued against him.

sd/-

(B.J.Shethna, J.)

Date : November 28, 2001 sd/-

(D. P. Buch, J.)

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